

RECEIVED
JUL 12 11 36 AM '00
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C99-1/16

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Complaint on Post E.C.S.

Docket No. C99-1

PRESIDING OFFICER'S RULING ON
DISCOVERABILITY OF *IN CAMERA* DOCUMENTS
PRODUCED BY UNITED STATES POSTAL SERVICE
IN RESPONSE TO RULING NO. C99-1/14

(Issued July 12, 2000)

In Presiding Officer's Ruling No. C99-1/14, I directed the Postal Service to provide potentially discoverable documents for *in camera* inspection to assess their relevance and the merits of claims of commercial sensitivity and other privileges. Complainant United Parcel Service (UPS) originally sought these documents in seven written discovery requests, to which the Postal Service objected on a variety of grounds. UPS moved to compel production of the requested documents, arguing *inter alia* that the Service should be required to substantiate each of its claims of privilege in an itemized "privilege log." In Presiding Officer's Ruling No. C99-1/9, I declined to compel disclosure of the requested documents at that time, but directed the Postal Service to prepare and file a list specifying the particular privileges claimed for the documents.¹

¹ Presiding Officer's Combined Ruling on Outstanding Motions of United Parcel Service to Compel Responses by United States Postal Service to Interrogatories and Request for Production of Documents, August 9, 1999, at 4-5.

The Postal Service responded with a pleading containing extensive tabular listings of claims of irrelevance and/or privileges which it invoked for some 98 responsive documents or categories of documents.² UPS then withdrew its request for production of some categories of documents, but asserted that the remaining responsive documents should be produced outright, in redacted form, or under an appropriate protective order.³

In its Response to Presiding Officer's Ruling No. C99-1/14, the Postal Service confirmed that it was contemporaneously filing documents in compliance with that ruling, and requested an opportunity to supplement the Descriptive List of claimed privileges it had previously filed. The Service also asked that procedures be established under which I would issue a preliminary or tentative ruling identifying documents to be disclosed prior to their release, to allow parties having proprietary or commercial interests in the documents to comment on the potential risk of harm that disclosure could cause, and on the need for protective conditions or redactions to prevent such harm. Finally, the Service also requested that the documents it had provided be returned to it once *in camera* inspection has been completed.⁴

Complainant opposed the Service's effort to introduce supplemental listings of document categories and additional objections, arguing they were untimely, too vague to allow adequate evaluation, and unfair. UPS also opposed the Service's request to establish a preliminary ruling procedure.⁵

² United States Postal Service Provision of Descriptive List of Responsive Documents and Associated Privileges Pursuant to Presiding Officer's Ruling No. C99-1/9, August 30, 1999. This filing lists documents responsive to most of the UPS interrogatories at issue individually, but provides a categorical description of documents responsive to Interrogatory UPS/USPS-5(d), as allowed in Presiding Officer's Ruling No. C99-1/12.

³ Response of United Parcel Service to the United States Postal Service's Privilege Log, September 9, 1999.

⁴ United States Postal Service Response to P. O. Ruling No. C99-1/14 and Motion for Issuance of Tentative Ruling on Disclosure, February 22, 2000.

⁵ Answer of United Parcel service to United States Postal Service Motion for Issuance of Tentative Ruling on Disclosure, February 29, 2000.

In Presiding Officer's Ruling No. C99-1/15, I ruled in favor of the Service's request to update listings of document categories and to supplement its objections in order not to deprive the Commission of the opportunity to consider the Service's more detailed and fully articulated presentation on the important issues presented. I also confirmed that the *in camera* documents would be returned to the Service as soon as their availability is no longer required for the purposes of this proceeding, but explained that under § 31a of the Commission's rules it would be necessary to retain any documents found to be discoverable, and thus potentially part of the evidentiary record, under appropriate conditions. Finally, I declined to adopt the requested preliminary ruling and comment procedures.

A. Standards for Determining Discoverability at This Procedural Stage

In response to an earlier motion of the Postal Service, I ruled in Presiding Officer's Ruling No. C99-1/3 that this complaint proceeding would be considered in phases, with the first phase limited to the issue of whether Post E.C.S. is a "postal" service for purposes of Chapter 36 of Title 39. Although I found that no legal principle compelled a limitation of issues in accordance with the Service's request, I noted that its concerns regarding the potential harm of wide-ranging discovery were reasonable, and that Complainant had stated its willingness to pursue the "postal versus nonpostal" issue exclusively at that time. In light of these considerations, the ruling states that:

The procedural schedule for this case will be phased, with its initial focus on the issue "is Post E.C.S. a 'postal' service? For this reason, discovery and other fact findings will be limited to the "postal" issue at this stage of the proceeding.⁶

⁶ Presiding Officer's Ruling Granting in Part Motion of United States Postal Service for Partial Reconsideration of Presiding Officer's Ruling No. C99-1/2 and Establishing Special Rules of Practice, July 7, 1999, at 3.

Subsequently, at the Postal Service's request, I certified an appeal of certain aspects of Ruling No. C99-1/3 to the Commission for its determination.⁷ The Commission affirmed the ruling in all respects. It also granted a separate motion of Complainant to allow discovery during the initial phase of the case on the Service's jurisdictional claim that Post E.C.S. is international in character, and not a domestic mail service. The Commission concluded that the "postal versus nonpostal" inquiry encompassed this issue, and that there was no justification for deferring its exploration to an additional phase of the case.⁸

These prior determinations establish the standard of relevance to be applied to the *in camera* documents now at issue. Because the current phase of this proceeding is limited to assessing the "postal versus nonpostal" character of Post E.C.S. service, relevant evidence is limited to facts bearing on that issue—including facts tending to illuminate the domestic and international aspects of Post E.C.S. Other information, *e.g.*, facts bearing on the costs associated with providing Post E.C.S. service or revenues it may have produced, is not germane to this issue, and its production will not be compelled at this stage of the proceeding.

With regard to relevant information contained in documents for which the Postal Service has invoked claims of commercial sensitivity and other privileges, such claims will be assessed in accordance with the established Commission practice of:

Balanc[ing] the potential competitive harm of disclosure against the strong public interest in favor of empowering each participant to obtain all the evidence needed to prove its case. As the Commission has recognized in past controversies, in accordance with long-established principles governing discovery in civil litigation, evidentiary privileges are exceptions to the general rule that proceedings must be conducted in public view.

⁷ Presiding Officer's Ruling No. C99-1/7, Ruling Certifying Appeal of Presiding Officer's Ruling No. C99-1/3, July 19, 1999.

⁸ Order No. 1258, Order Affirming Disposition of Procedural Issues in Presiding Officer's Ruling No. C99-1/3, August 6, 1999, at 4-6.

Order No. 1283, January 28, 2000, at 3, *quoting* Docket No. R97-1, Presiding Officer's Ruling No. R97-1/62, November 17, 1997, at 8. In particular, where the trade secret privilege has been invoked, the Commission has consistently observed the maxim that, "disclosure rather than protection is the rule because of the overriding interest requiring that each party be empowered to obtain all evidence needed to prove his case."

Docket No. R94-1, Order No. 1025, August 17, 1994, at 11.

B. Appropriate Forms of Disclosure

Depending upon the nature and form of apparently privileged material included in documents found to contain relevant information, disclosure may be appropriate under a variety of terms. As the Commission stated in Order No. 1283:

A variety of tools are available for making, and acting upon, this assessment without compromising the sensitive aspects of the controversial information. The Presiding Officer may direct that responsive documents or other materials be produced for *in camera* inspection. Depending on the nature of the material found to be privileged, he may rule that it qualifies for full protection against disclosure. Alternatively, he may order its disclosure in redacted form, "allowing access only to that information necessary to serve the purpose for which release was granted." The Presiding Officer may also prescribe other terms tailored to the release of specific forms of sensitive information. Thus, if the range of controversial materials sought in Complainant's discovery requests, and the varying number and seriousness of the Service's claims of privilege for different items, warrant disclosure under different terms, as the Presiding Officer anticipates, the means are available to implement such an approach.

Order No. 1283, *supra*, at 3. (Footnotes omitted.)

Following *in camera* inspection of the extensive compilation of documents provided by the Postal Service in response to Ruling No. 14, I find that individual documents exhibit highly variable degrees of relevance and privilege. Some documents—provided apparently because they contain references to Post E.C.S.—are

otherwise wholly irrelevant to the issues in this case, and are commercially sensitive to varying degrees. None of these is appropriate for compelled disclosure, and accordingly all will be returned to the Postal Service forthwith. Other documents containing descriptive information about Post E.C.S. service, which may bear on the "postal" character of the service, appear from their content or context to have been intended for public dissemination, or evidently have been publicly released. These are appropriate for unrestricted disclosure, and I shall direct that they be included in a Presiding Officer's Library Reference that will be available for public inspection at the Commission.

Between these clear-cut examples lies a spectrum of documents with varying combinations of relevance and privilege—the latter including commercial sensitivity, proprietary interest, and the deliberative process privilege. In those instances in which public disclosure of the contents of documents containing relevant information could reasonably be expected to result in compromising these interests, it is appropriate to adopt measures designed to protect them. This would include the document's release in redacted form, or limitation to access under protective conditions.

For those documents containing relevant information that I find to be appropriate for disclosure only under protective conditions, the Commission will retain the copies provided by the Postal Service and make them available under the terms adopted in Order No. 1283, as clarified and corrected in Order No. 1287. However, for those documents I find appropriate for disclosure only with redactions of privileged portions of the contents, I will direct the Secretary of the Commission to return them to the Postal Service for redaction in accordance with the terms of this ruling.

C. Review of Responsive Documents By Category

The privilege log submitted by the Postal Service is organized to list documents and the objections and/or privileges invoked for them in a manner that tracks the UPS interrogatories (or parts thereof) to which they are responsive. Within each responsive

category, documents have been numbered sequentially.⁹ The following discussion will address the responsive documents in the same order.¹⁰

1. All documents (other than technical manuals) referring or relating to Post E.C.S.

Category 5G6—Various email messages and other communications concerning customer relations and sales issues. This category contains 32 documents, most of which are business communications or reports. The substance of virtually all these documents is irrelevant to issues currently before the Commission, and many contain commercially sensitive or proprietary business information. One exception is Document 5G6-32, which consists of Frequently Asked Questions about Post E.C.S. and apparently is intended for widespread distribution. In light of its relevance and apparent publicity, this document shall be publicly disclosed. The UPS motion is denied with respect to all other documents in this category.

Category 5G7—Status reports concerning USPS's and foreign posts' customer activity, service usage, and telemarketing results. This category consists of 35 documents. In general, they contain information about current and prospective users of Post E.C.S. service, but say little to nothing about the service itself. For the most part, these documents are commercially sensitive because of the customer information they contain. In light of their overall lack of direct relevance to the character of Post E.C.S. service and commercial sensitivity, I shall not order their production.

⁹ See United States Postal Service Response to P. O. Ruling No. C99-1/14, *supra*, at 1 n. 2.

¹⁰ Throughout this ruling, the cited documents are those marked with the document numbers assigned by the Postal Service in its Descriptive List of Responsive Documents and Associated Privileges filed on August 30, 1999, as updated in its Response to P.O. Ruling No. C99-1/14 and Motion for Issuance of Tentative Ruling on Disclosure, filed February 22, 2000.

Category 5G8—Internal PowerPoint presentations regarding project status and service features. The nine documents in this category consist of internal Postal Service briefing materials and e-mail messages. The information they contain regarding the character and operation of Post E.C.S. ranges from slightly relevant to highly relevant; most of the documents contain commercially sensitive matter, some of it highly sensitive internal analytical and planning information. However, Document 5G8-7 is not sensitive, and shall be produced. Because of its highly sensitive nature, Document 5G8-6 shall be returned to the Service for redaction of analyses relating to potential, rather than actual, Postal Service electronic service offerings, and thereafter shall be produced. The other documents in the category shall be made available under the protective conditions attached to this ruling.

Category 5G9—PowerPoint presentations to postal conference attendees. The two documents in this category describe Post E.C.S. service, and thus are relevant. It appears these presentations were intended for essentially public promotional purposes. Therefore, sensitivity is not a consideration here, and I shall direct that they be publicly disclosed.

Category 5G10—Communications and draft creative for proposed internal and external public relations activity. For the most part, these eight documents involve planning and strategy for marketing Post E.C.S., rather than information about the service itself. As such, the documents generally are of minimal relevance, and commercially sensitive to varying degrees. However, 5G10-4, consisting of frequently asked questions about Post E.C.S., is more relevant and not sensitive. Therefore, I shall direct that this document be publicly released, but not the others in the category.

Category 5G12—Client notes, research, communications regarding product development. The 47 documents¹¹ in this category concern numerous aspects of the circumstances under which Post E.C.S. was developed. Most of them are wholly irrelevant or minimally relevant to the intrinsic features of the service, and need not be produced. However, some are of greater relevance, but contain proprietary information or are otherwise sensitive to varying degrees.

In particular, in addition to information about the Post E.C.S. service itself, Documents 5G12-5, -14, -19, and -20 contain information regarding Postal Service plans and objectives. In order to avoid compromising these sensitive features of the documents, they shall be returned to the Service for redaction of information that would reveal internal Postal Service strategies and plans, and thereafter shall be produced.

Documents 5G12-15, -18, -21 and -24 contain information relevant to the operational bases of Post E.C.S. service, but also technical information that is proprietary to a contractor, Tumbleweed Communications Corp., which has asked that any disclosure of its proprietary information be subject to the protective conditions adopted by the Commission in Order No. 1283.¹² Accordingly, I shall direct that these documents be made available, but only under protective conditions.

Category 5G18—Obsolete or superseded sales and marketing plans. Although the information contained in these four documents may have been overtaken by subsequent events, they are somewhat relevant to establishing the character of Post E.C.S. service, but are also sensitive because of the inclusion of plans for potential marketing and sale of Post E.C.S. I shall direct the Service to provide these documents, following their return for redaction of information that would reveal internal Postal Service marketing and sales plans.

¹¹ While the document number 5G12-32 appears to have been assigned in sequencing the documents in this category, upon inspection no document bearing this number was found.

¹² See Tumbleweed Communications Corp.'s Comments on the Release of Commercially Sensitive Information to UPS and the Public, February 24, 2000.

Category 5G20—Documents concerning other Postal Service initiatives which refer tangentially to Post E.C.S. While these 34 documents do not directly concern Post E.C.S., some deal with general matters that apply to some features of the Post E.C.S. service as well as other electronic initiatives, and thus have relevance. These are sensitive to varying degrees.

Document 5G20-7 is a published news article on future Postal Service initiatives. In view of its public nature, I shall order it produced.

Documents 5G20-5, 8-12, 14-15, 20, and 34 contain information relevant to Post E.C.S., but which also is commercially sensitive or proprietary to the Postal Service. I find these materials appropriate for disclosure under protective conditions, and they shall be made available on that basis.

Documents 5G20-24-25 and -32-33 contain relevant information that is also proprietary to Tumbleweed Communications. On this basis, I shall direct that these documents also be made available under protective conditions.

Category 5G21—Public Relations Marketing Communications. These 17 documents consist of, or concern, press releases and similar modes of publicizing Post E.C.S. While they appear to be of marginal relevance, 5G21-4, -12, and -13 apparently were publicly released, and for that reason they shall be disclosed.

Category 5G25—Management briefing papers concerning Post ECS activities and status. These 12 documents concern various aspects of Post E.C.S., some highly relevant to the character of the service and others of no direct relevance because they solely concern extrinsic matters such as finance. These documents are proprietary and sensitive to varying degrees.

Three documents in particular—5G25-4, -10 and -11—appear to be both highly relevant and highly sensitive because they contain closely held strategic and planning information. However, it appear that these portions of the documents' contents are separable from the information about the Post E.C.S. service as such. For this reason, I shall direct the Postal Service to produce these documents following redaction of their strategic and planning content.

Three other documents—5G25-1, -2 and -12—are also relevant and commercially sensitive, but unlike the previous group contain no strategic or planning content. For this reason, I find them appropriate for disclosure under protective conditions, and shall so rule.

Category 5G26—Documents concerning research of similar services and technologies in marketplace. These 27 documents contain the results of background research and analyses of the market for services comparable to Post E.C.S. While most do not bear directly on the Post E.C.S. service itself, some are relevant to establishing the kind of service it is perceived to be.

Some of these documents—5G26-5 through -9, -11 through -18, and -24 through -26—are copies of published articles, and thus are in the public domain. For this reason, they shall be publicly released.

Other documents are sensitive because they consist of internal Postal Service planning documents or analyses prepared for competitive purposes. These are Documents 5G26-19 through -21 and 5G26-23. Owing to their high degree of sensitivity, I shall direct that they be produced following redaction by the Postal Service of those portions of their content that consists of internal planning and competitive analysis.

Category 5G27—Draft price lists and sales support information. The first of these documents concerns Post E.C.S. pricing, and thus is irrelevant at this stage of the proceeding. Documents 5G27-2 and -3 appear to have some relevance to Post E.C.S. service and evidently are intended for public release, and accordingly shall be produced.

Category 5G28—Reports concerning demand for, and other information about, foreign posts' implementation of Post E.C.S. Inasmuch as these two documents report the implementation of Post E.C.S. by foreign postal administrations, but do not concern the Postal Service's offering of that service, they are irrelevant, and need not be produced.

2. Promotional materials, coupons, advertisements, solicitations, and other similar items (the names of customers or potential customers need not be provided).

Category 5A—Solicitation letter directed to top officials. The two documents in this category consist of copies of a letter intended to promote Post E.C.S. service. It appears to be a general-purpose marketing tool with minimal substantive information about Post E.C.S. In view of its lack of relevance, it need not be produced.

3. Instructions to Postal Service or contractor personnel involved in selling, promoting, providing, or answering inquiries concerning Post E.C.S.

Category 5B—Marketing materials. These 16 documents consist primarily of internally-generated Postal Service planning, sales strategy, solicitation, and account establishment information for use in marketing Post E.C.S. service. In general, they contain little substantive information about Post E.C.S. itself, and thus are of insufficient relevance to justify their production. One exception is Document 5B-11, a product data sheet apparently intended for distribution to prospective customers. In light of its relevance and public nature, I shall direct that this document be produced.

4. Motivational tools, training materials, and any other similar material for Postal Service or contractor personnel; all training manuals or materials (other than Technical Materials) used or prepared by or for the Postal Service regarding Post E.C.S.

Category 5C—Training and sales support materials. A majority of these 15 documents contain descriptive information regarding features or use of Post E.C.S., and thus are relevant. Some of these—Documents 5C-1 through -5, -9, -17 and -20—contain relevant information but no sensitive content, and shall be produced publicly. Documents 5C-11 and -12 contain relevant descriptive material, but also sensitive proprietary marketing and sales information. Because the latter components of the two documents are separable, I shall direct that they be produced following redaction of the portions of the documents that are not descriptive of Post E.C.S. as a service.

5. Communications sent to any customers or potential customers, by mail or by any other form of delivery, including by wholly electronic means (the names of customers or potential customers need not be provided).

Category 5D—Various messages. The six documents in this category consist of both generic and customer-specific messages intended for transmission to current or prospective users of Post E.C.S. service. With the exception of the three customized presentations in Document 5D-4—which contain information about the operation of Post E.C.S. and thus are relevant—the documents have no relevance to issues at this stage of the proceeding. Document 5D-4 shall be produced following redaction of information which identifies potential or actual customers.

6. Plans for future marketing of Post E.C.S.

Category 5E—Planning and activity documents. These four documents consist of information about planned marketing and advertising of Post E.C.S. service in the United States and elsewhere. They do not contain descriptive information about Post E.C.S., and are commercially sensitive to varying degrees. In view of their sensitivity and lack of relevance, I find that they need not be produced.

7. Any surveys of customers or potential customers or market studies concerning Post E.C.S.

Category 5F—Customer feedback and survey results. These nine documents contain information on customer contact and feedback regarding interest in and use of Post E.C.S. Inasmuch as they relate to assessing the interest of potential and actual users of the service, rather than its characteristics, these documents are irrelevant. They are also commercially sensitive to varying degrees. In light of the lack of relevance, these documents need not be produced.

8. All proposals, bids, solicitations, and advertising for Post E.C.S. provided to customers or potential customers on Post E.C.S. (the names of customers or potential customers need not be provided).

Category 10—Promotional materials. These promotional documents contain varying amounts of substantive information about the Post E.C.S. service, and thus are relevant generally. Most of them—Documents 10-3 through -6 and 10-8 through -10—appear to have been intended for public dissemination or display on the Postal Service's website. As such, they are appropriate for public release, and I shall so rule. However, the overviews provided in Documents 10-1 and -2 contain some potentially sensitive material, and I find them appropriate for access under protective conditions.

9. Memoranda, studies, reports, analyses, and recommendations on whether the Postal Service should provide Post E.C.S.

Category 13—Presentations on Post E.C.S. The two documents in this category to which Complainant continues to seek access are materials relating to the Postal Service's decision to initiate the Post E.C.S. service. Document 13-1 consists of a Business Proposition to offer Post E.C.S. internationally under the auspices of the International Post Corporation, with an accompanying memorandum. While the document is relevant to establishing the international origins of the Postal Service's involvement in Post E.C.S.—which does not appear to be in controversy in this case—it contains essentially no descriptive information about the service, and is highly commercially sensitive, as the Postal Service asserts. For this reason, I find that the document is insufficiently relevant to warrant directing its production.

Document 13-2 is a printout of a visual presentation to the Board of Governors made by postal management. While it is highly relevant, it is also commercially sensitive, instrumental to the Governors' deliberative process, and contains information bearing on other potential service offerings, as the Postal Service has argued. In light of these considerations, I shall direct that the document be produced, but only following the Service's redaction of its deliberative briefing points, product planning content other than descriptive information about Post E.C.S. service, and extraneous information concerning services other than Post E.C.S.

10. All contracts or agreements concerning Post E.C.S., including all agreements between or among the Postal Service, La Poste, Canada Post Corporation, and International Post Corporation.

Category 14—Agreements. This category consists of two agreements regarding Post E.C.S. to which the Postal Service is a party. Document 14-1 is a software development and licensing agreement among International Post Corporation, Tumbleweed Software (now Tumbleweed Communications), Canada Post, the United States Postal Service, and LaPoste, together with exhibits and addenda. Most of this document consists of contractual provisions; however, it also includes details of software functions that are relevant to the operation of Post E.C.S. This operational information is sufficiently relevant to warrant production of the document under protective conditions, which Tumbleweed has requested for protection of its proprietary information. This protective mode of access has been used in connection with discovery of relevant information in Postal Service contracts and other sensitive materials in several recent dockets, as the Commission observed in Order No. 1283.¹³

Document 14-2 is an unsigned version of a Service Provider Agreement among Tumbleweed, IPC, USPS, Canada Post and LaPoste. In addition to contractual terms, this document includes detailed design specifications that appear to be relevant to the functioning of Post E.C.S. service. In light of the proprietary and commercially sensitive nature of the information regarding Tumbleweed's products and services, I shall also direct that this document be accessible only under protective conditions.

¹³ See Order No. 1283, *supra*, at 4-5.

RULING

1. The Motion of United Parcel Service to Compel United States Postal Service to Respond to Interrogatories UPS/USPS-1 through UPS/USPS-7 and UPS/USPS-9 through UPS/USPS-20, filed June 8, 1999, as modified in the Response of United Parcel Service to the United States Postal Service's Privilege Log, filed September 9, 1999, is granted in part, as specified in the body of this ruling.
2. The following documents responsive to the above-referenced discovery requests of United Parcel Service are designated for inclusion in Presiding Officer's Library Reference LR-PO-1, which shall be made available for public inspection in the Commission's docket section:

5G6-32, 5G8-7, 5G9-1 and -2, 5G10-4, 5G20-7, 5G21-4, -12, and -13; 5G26-5 through -9, -11 through -18, and -24 through -26; 5G27-2 and -3; 5B-11; 5C-1 through -5, -9, -17 and -20; and 10-3 through -6 and 10-8 through -10.

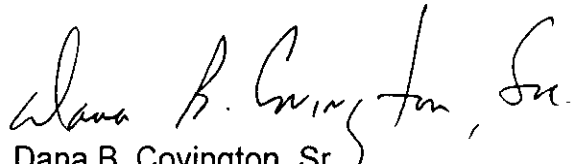
3. The United States Postal Service shall produce the following documents in response to the above-referenced discovery requests of United Parcel Service no later than two weeks after their return from the Commission, following their redaction in accordance with the directions in the body of this ruling:

5G8-6; 5G12-5, -14, -19, and -20; 5G18-1 through -4; 5G25-4, -10 and -11; 5G26-19 through -21 and 5G26-23; 5C-11 and -12; 5D-4; and 13-2.

4. The following documents are available in the Office of the Secretary for inspection by qualified individuals under the protective conditions attached hereto:

5G8-1 through -5, 5G8-8 and -9; 5G-15, -18, -21 and -24; 5G20-5, 8-12, 14-15, 20, and 34; 5G20-24-25 and -32-33; 5G25-1, -2 and -12; 10-1 and -2; 14-1; and 14-2.

5. All documents provided by the Postal Service for *in camera* inspection pursuant to Presiding Officer's Ruling No. C99-1/14, other than those specified in paragraphs 2 and 4, *supra*, shall be returned to the Postal Service by the Secretary of the Commission forthwith.


Dana B. Covington, Sr.
Presiding Officer

STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

The following protective conditions limit access to materials provided in Docket No. C99-1 by the Postal Service or other parties that the Presiding Officer or the Commission has directed to be produced and examined under protective conditions. Individuals seeking to obtain access to such material must agree to comply with these conditions, complete the attached certifications, provide the completed certifications to the Commission, and serve them upon counsel for the party submitting the confidential material.

1. Only a person who is either:

(a) an employee of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or

(b) an individual participant in Postal Rate Commission Docket No. C99-1; or a person (not an employee) acting as outside counsel, agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. C99-1; shall be granted access to these materials. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. "Involved in competitive decision-making" includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.

2. Counsel for a person who fully satisfies the qualifications set forth in paragraph 1(b) above shall serve by hand delivery or facsimile transmission a copy of that person's completed certification on counsel for the party that has provided the material to which the person wishes to be granted access. The person shall not be granted access until the eighth day after such service has been made. The party providing the material, or any other party with an interest in the protection of the material, shall have until seven days after receipt of the certification to object to access being granted to such person, by filing an objection with the Commission and serving opposing counsel by hand delivery or facsimile transmission. If such an objection is filed, the participant seeking to examine protective materials may file a response within seven days from the time the objection is filed with the Commission. Any such response must be served upon filing the objection, by hand delivery or facsimile transmission. If the Presiding Officer determines that the objection is not meritorious on its face, the Presiding Officer may issue a ruling granting access before receiving a response.

3. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
4. The final date of any participant's access shall be:
 - (a) the date on which the Postal Rate Commission issues its recommended decision or otherwise closes Docket No. C99-1; or
 - (b) the date on which that participant formally withdraws from Docket No. C99-1; or
 - (c) the last date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. C99-1 participant on whose behalf that person obtains access, whichever comes first. The participant immediately shall notify the Postal Rate Commission and counsel for the party who provided the protected material of the termination of any such business and consulting arrangement or retainer or affiliation that occurs before the closing of the evidentiary record.
5. Immediately after the Commission issues its recommended decision or otherwise closes Docket No. C99-1, a participant (and any person working on behalf of that participant) who has obtained a copy of these materials shall certify to the Commission:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or returned to the Commission.
6. The duties of any persons obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

7. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially-sensitive, and privileged information.
8. These conditions shall apply to any revised, amended, or supplemental versions of materials provided in Docket No. C99-1.
9. The duty of nondisclosure of anyone obtaining access to these materials is continuing, terminable only by specific order of the Commission.
10. Any Docket No. C99-1 participant or other person seeking access to these materials by requesting access, consents to these or such other conditions as the Commission may approve.

CERTIFICATION

The undersigned represents that:

Access to materials provided in Docket No. C99-1 by a participant in response to rulings of the Presiding Officer or orders of the Commission and filed under protective conditions (hereinafter, "these materials" or "the information") has been authorized by the Commission.

The copy obtained is marked on every page with my name.

I agree to use the information only for purposes of analyzing matters at issue in Docket No. C99-1.

I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain in strict confidence these materials in accordance with all of the protective conditions set out above.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____

**CERTIFICATION UPON RETURN OF
PROTECTED MATERIALS**

When I obtained materials provided in Docket No. C99-1 by a participant in response to rulings of the Presiding Officer or orders of the Commission and filed under protective conditions, I certified to the Commission that I was eligible to receive it. I now affirm as follows:

1. I have remained eligible to receive access to materials under paragraph 1 of the protective conditions throughout the period those materials have been in my possession. Further, I have complied with all conditions, and have maintained these materials in strict confidence in accordance with all of the protective conditions set out above.
2. I have used the information only for purposes of analyzing matters at issue in Docket No. C99-1.
3. I have returned the information to the Postal Rate Commission.
4. I have either surrendered to the Postal Rate Commission or destroyed all copies of the information that I obtained or that have been made from that information.

Name _____

Firm _____

Title _____

Representing _____

Signature _____

Date _____